

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 65 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE D.G.KARIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
1 to 5 No

DALPATBHAI NARSINHBHAI PRAJAPATI

Versus

STATE OF GUJARAT

Appearance:

MS KUSUM M SHAH for Petitioner
MR.S.R.DIVETIA,ADDL PUBLIC PROSECUTOR for
Respondent.

CORAM : MR.JUSTICE D.G.KARIA

Date of decision: 16/03/96

ORAL JUDGEMENT

Rule. Mr.S.R.Divetia, learned Addl. Public
Prosecutor, waives service of rule on behalf of the
respondent-State.

In the facts and circumstances of the case and with the consent of the learned Advocate for the petitioner, Ms.Kusumben Shah, and also that of the learned Addl. Public Prosecutor, Mr.S.R.Divetia, the matter is finally heard today.

The petition is directed against the concurrent judgments convicting the petitioner for the offences under sections 279 and 304 Part A of the Indian Penal Code and sentencing him to undergo rigorous imprisonment for one year and to pay a fine of Rs.1,000/-, in default to undergo rigorous imprisonment for one month. The said order of conviction and sentence was passed by the learned Judicial Magistrate, First Class, Radhanpur, on 28.10.1994 in Criminal Case No.760 of 1987. Against the said order of conviction and sentence, the petitioner-accused preferred Criminal Appeal No.20/94 in the Sessions Court, Banaskantha, at Palanpur. The learned Sessions Judge. Banaskantha at Palanpur, dismissed the said appeal and confirmed the order of the learned Magistrate, on 7.2.1996. Against both the said orders of conviction and sentence, the present Revision Application is preferred.

The petitioner-accused has been found guilty of causing death by negligence of one labourer of P.W.D. working on road while the petitioner was driving his vehicle from Radhanpur to Rozu at about 7.00 a.m. on 11.9.1987. He is also found guilty of driving the vehicle rashly and negligently on the public way at the same time and date. During the trial since 1987 till the judgment of the appellate Court, which came to be delivered in February 1996, the petitioner was on bail.

At the time of the admission of the petition, Ms. Kusumben Shah, learned Advocate for the petitioner, did not argue the Revision Application on merits and confined herself only to the point of sentence with a particular request of releasing the petitioner on probation, in view of the circumstances of the case mentioned hereinafter. Therefore, by the order dated 1.3.1996, this Court called for the report of the Probation Officer, Palanpur. Pursuant to the said order, the Chief Probation Officer of Banaskantha District at Palanpur has furnished his report in the prescribed form along with the necessary certificates from Varahi Police Station and a certificate regarding character of the petitioner from a doctor at Varahi and also the Certificate of the character of the petitioner from Sarpanch of Varahi. I have considered the report of the Chief Probation Officer, Palanpur. He has recommended to release the petitioner on probation,

in view of the facts and circumstances and the good character of the petitioner as mentioned in the report. Mr. S.R. Divetia, learned Addl. Public Prosecutor, appearing for the respondent-State, has also seen the report and concedes that this is a fit case where probation should be granted.

The incident is of 1987. It is manifest from the report of the Chief Probation Officer that the death of the victim was due to sheer accident and the petitioner did not intend to cause death or damage to any one and accidentally the incident has occurred. Ms. Kusumben Shah, learned Advocate for the petitioner, states that the widow of the victim and the child have been paid a substantial amount of Rs.1,35,000/- by way of damages by the Insurance Company. It is also stated in the report of the Chief Probation Officer that the petitioner-accused is young. He has a wife named Manguben, aged about 38 years, who has to maintain two young children by doing household work of others. Thus, in absence of the petitioner, the family of the petitioner, including his old parents, has been facing hardships and inconveniences as the main earning member of the family is away from the family. It is also evident from the certificates attached to the said report of the Probation Officer that the petitioner has good moral character. I am, therefore, of the opinion that having regard to the circumstances of the case and also having regard to the nature of the offence and character of the offender, it is expedient to release the petitioner on probation of good conduct. The offence proved against the petitioner is not punishable with death or imprisonment for life. Ms. Shah submits that the petitioner-offender and his surety have fixed places of abode and regular occupation at Varahi. Thus, considering the report of the Probation Officer in relation to the case, in my view, this is a fit case to grant probation of good conduct to the petitioner-offender.

In the above view of the matter, the petitioner is ordered to be released on probation for one year on his entering into a bond with a surety for Rs.5,000/ and further undertaking to appear and receive sentence when called upon during the period of one year from today. In the meantime, the petitioner shall keep the peace and be of good behaviour for a period of one year from the date of this order. Accordingly, the sentence imposed on the petitioner by the lower Courts shall stand suspended, on the petitioner fulfilling the aforesaid condition of entering into bond. Fine, if paid, be refunded to the petitioner. Rule is accordingly made absolute.

Direct Service Permitted.
